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ROSENMAN & COLIN LLP
1000 17TH STREET, N.W.
WASHINGTON, D.C. 20036

TELEPHONE: (202) 463-4640

FACSIMILE: (202) 429-0046

WEB SITE: <http://www.rosenman.com>

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS

April 14, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
Washington, D.C. 20554

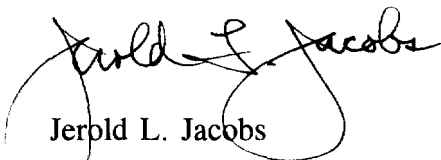
Re: MM Docket No. 98-13
FM Table of Allotments
Topeka, Iola, and Emporia, Kansas

Dear Ms. Salas:

Enclosed herewith for filing, on behalf of our client, Shawnee Broadcasting Corporation, licensee of Station KWIC(FM), Topeka, Kansas, are an original and four (4) copies of its "Reply Comments of Shawnee Broadcasting Corporation" in the above-referenced matter.

Please direct any inquiries or communications concerning this matter to the undersigned.

Very truly yours,



Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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FEDERAL COMMUNICATIONS COMMISSION
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1. The Notice of Proposed Rule Making and Order to Show Cause ("Topeka NPRM") herein proposes that the FM Table of Allotments be amended to substitute Channel 257C3 for Channel 257A at Topeka, Kansas, and to modify the license of Station KWIC to specify operation on that channel. To accomplish that objective, two other changes in the Table of Allotments are also proposed: the substitution of Channel 268A for Channel 257A at Iola, Kansas, and the modification of Station KIKS's license to specify the new channel; and the

substitution of Channel 241A for Channel 258A at Emporia, Kansas, and the modification of Station KRWV(FM)'s license accordingly.

2. In their Comments, Innovative affirmatively supports the Topeka NPRM because changing Station KIKS's frequency to Channel 268A will allow Station KSEK to upgrade to 6 kilowatts (a further public interest benefit favoring grant of the Topeka NPRM), and KIKS does not object to the proposed channel substitution. In response to KIKS's concern about reimbursement for its frequency change, Shawnee reaffirms its commitment to reimburse Stations KIKS and KRWV for their reasonable out-of-pocket expenses related to implementing their frequency changes in accordance with the Commission's well-established Circleville, Ohio reimbursement policy (8 FCC 2d 159 (1967)) and subsequent case precedents. Because Station KRWV did not file any Comments, it is deemed to have consented to the proposed modification of its license, consistent with Paragraph 7 of the Topeka NPRM.

3. What remains for discussion is the critically important point that neither the Topeka NPRM nor the Pleasanton NPRM addresses the fact that the allotment proposed in the earlier-adopted Pleasanton NPRM is mutually exclusive with the allotments proposed in Shawnee's earlier-filed Petition for Rulemaking. Specifically, the Petition for Rulemaking filed on December 30, 1997 (RM-9216) by the City of Pleasanton, Kansas requests that Channel 268C3 be allotted to Pleasanton as that community's first local transmission service, but that proposal is mutually exclusive with Shawnee's December 29, 1997 Petition for Rulemaking (RM-9212), which, inter alia, would substitute Channel 268A for Channel 257A at Iola, Kansas in order to upgrade Station KWIC from Channel 257A to Channel 257C3.

4. It is well-established that FM channel rulemaking petitions are "cut off" at their filing date, so that later-filed mutually exclusive rulemaking petitions or conflicting FM

applications will, at most, be treated as counterproposals if filed by the deadline for initial comments. See §1.420(d); Conflicts Between Applications and Petitions for Rulemaking, 7 FCC Rcd 4917, 4919 (1992). The attached Engineering Statement ("Statement") by Clarence M. Beverage of Communications Technologies, Inc. (submitted by Shawnee in the Pleasanton proceeding on April 3, 1998 as an Exhibit to its Reply Comments), concludes (at 1) that the Pleasanton proposal is mutually exclusive with Shawnee's earlier-filed proposal to allot Channel 268A at Iola. Therefore, it is clear that the later-filed Pleasanton Channel 268C3 proposal should not have been put out for comment in a separate NPRM but, rather, should have been treated as a counterproposal in this Topeka/Iola/Emporia proceeding.

5. Nevertheless, Shawnee has discovered that it is possible to favorably resolve the proceedings in MM Dockets 98-9 and 98-13 without terminating the Pleasanton proceeding and folding it into this proceeding as a "counterproposal". Instead, the Statement identifies alternate, non-mutually exclusive, channels for use at Pleasanton and demonstrates that the Pleasanton Channel 268C3 proposal can be modified as part of a "global solution" so that the two proceedings can be resolved to the mutual satisfaction of all four communities involved.¹

6. As to the propriety of advancing a "global solution" at the Reply Comment point in the Pleasanton proceeding, it is clear that the "Commission may allot an alternate channel in order to resolve conflicts between proposals". See FM Table of Allotments (Salem and New Martinsville, WV), 10 FCC Rcd 13780 n.4 (Mass Media Bur. 1995), citing Pinewood, SC, 5 FCC Rcd 7609 (1990). Moreover, the Commission has held that "it is appropriate to suggest

¹ Mr. Beverage's analysis includes the community of Girard, Kansas and the fact that Station KSEK can upgrade to 6 kilowatts if Station KRWV's frequency is changed from Channel 258A to Channel 241A as proposed herein. See Paragraph 1 above.

in reply comments alternate channels for communities at issue in a proceeding". See FM Table of Allotments (Corpus Christi and Three Rivers TX), 11 FCC Rcd 517 ¶5 (Mass Media Bur. 1996). Thus, Shawnee's identification of a major procedural and substantive error in the Pleasanton proceeding and Shawnee's proposal of a "global solution" for both proceedings is fully warranted and consistent with Commission policy and case precedent.

7. Mr. Beverage has found one Class C3 frequency (Channel 229C3) and three Class A frequencies (Channels 229A, 233A, and 253A) which would meet all of the Commission's technical standards for allotment to Pleasanton without being mutually exclusive with Shawnee's Iola rulemaking proposal. See Statement at 2 and Tables I-IV. Moreover, Mr. Beverage notes that the 1990 U.S. Census population of Pleasanton is 1231 persons, it is located in Linn County (8254 persons), and the potential 60 dBu contour audience for Pleasanton's Channel 268C3 is 34,241 persons. Id. at 3, 4. In comparison, allotting Channel 229C3 to Pleasanton would yield a potential 60 dBu contour audience of 30,670 persons -- only about 10% less than Channel 268C3. Id. at 3 and Figure 1. On the other hand, in the event that the Commission were to conclude that only a Class A frequency would eliminate mutual exclusivity with the allotment of Channel 268A to Iola -- a "worst case" scenario, Mr. Beverage shows that allotting Channel 229A to Pleasanton would yield a potential 60 dBu contour audience of 12,098 -- still far in excess of the total area and population of Pleasanton and Linn County. Id. at 4 and Figure 2.

8. Shawnee recognizes that Commission precedent presumptively favors allotting a first local transmission service to a community over a plan to upgrade an existing station. See FM Table of Allotments (Benton AR et al.), 3 FCC Rcd 4840 (MM Bur. 1988)(first service to communities has a higher public interest priority than mere upgrades of existing channels). In such circumstances, a petitioner is expected to provide a showing of need for the proposed

frequency upgrade, and, absent such a showing, "a conflicting new allotment would be favored since it represents a new service". Id. Most importantly, however, in this proceeding the choice is not between allotting a first local service to Pleasanton and upgrading Shawnee's Topeka station to Class C3. Rather, the Statement fully demonstrates that there are four other frequencies, apart from Channel 268C3, any of which could be allotted to Pleasanton as its first local transmission service. Therefore, the only question is which frequency will be allotted, not whether an allotment frequency can be found. In this unique type of situation, Shawnee does not believe that the first service "presumption" is applicable. Where both a first service and an upgrade can be allotted on a non-mutually exclusive basis, the public interest surely favors doing both, rather than adding a first service to one community and depriving four other communities of significant additional 60 dBu service. Shawnee knows of no case precedent to the contrary.

9. Put differently, Commission precedent clearly favors channel allotment resolutions which maximize the number of communities that will receive new local transmission outlets and upgraded facilities. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986) (§307(b) of the Communications Act is better served by granting proposals to serve three communities instead of one). In the Pleasanton proceeding, choosing an alternate Class C3 or Class A frequency for Pleasanton, instead of Channel 268C3, will provide a first local service for Pleasanton, upgraded facilities for Topeka and Girard, and significant increased 60 dBu service for Iola and Emporia. This represents a total gain in 60 dBu service of 71,343 persons (with Pleasanton Channel 229C3) or 49,200 persons (with Pleasanton Channel 229A) versus a mere 34,241 persons for Pleasanton alone, if Channel 268C3 is allotted to Pleasanton. (The total 60 dBu contour audience gain of 37,102 persons in this proceeding will be completely lost if the Commission allots Channel

268C3 to Pleasanton.) Therefore, Shawnee submits that the public interest clearly warrants that Channel 229C3 or a Class A frequency (such as Channel 229A) should be allotted to Pleasanton, instead of Channel 268C3, so that the allotments proposed in the Topeka NPRM can also be granted. See Archilla-Marcocci Spanish Radio Co., *supra*.

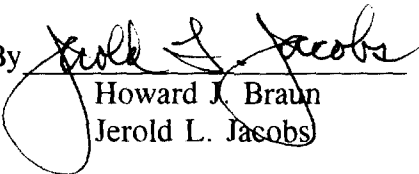
10. In sum, Shawnee urges that allotting Channel 229C3 or a Class A frequency (such as Channel 229A) to Pleasanton, instead of Channel 268C3, fully satisfies the City of Pleasanton's request for a first local transmission service and also serves the paramount public interest by eliminating the mutual exclusivity between the two proceedings and permitting significant service area coverage improvements for FM stations in four other Kansas communities, apart from Pleasanton.

WHEREFORE, in view of the foregoing, Shawnee respectfully requests that the Commission should amend the FM Table of Allotments and modify the licenses of Stations KWIC, KIKS, and KRWV as proposed in the Topeka NPRM and should allot Channel 229C3 or Channel 229A, 233A, or 253A to Pleasanton, Kansas, instead of Channel 268C3, in the Pleasanton NPRM proceeding.

Respectfully submitted,

SHAWNEE BROADCASTING CORPORATION

By



Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
Washington, D.C. 20036
(202) 463-4640

Its Attorneys

Dated: April 14, 1998

REPLY COMMENTS BY
SHAWNEE BROADCASTING CORP.
KWIC(FM) TOPEKA, KANSAS
IN THE MATTER OF
NOTICE OF PROPOSED RULE MAKING
PROPOSED CHANNEL 268C3
PLEASANTON, KANSAS

APRIL 1998

**REPLY COMMENTS BY
SHAWNEE BROADCASTING CORP.
KWIC(FM) TOPEKA, KANSAS
IN THE MATTER OF
NOTICE OF PROPOSED RULE MAKING
PROPOSED CHANNEL 268C3
PLEASANTON, KANSAS**

APRIL 1998

SUMMARY

The following statement has been prepared on behalf of **Shawnee Broadcasting Corp. ("Shawnee")**, licensee of KWIC(FM), Topeka, Kansas. **Shawnee** has filed a Petition for Rule Making (RM-9212) to amend the Table of Allotments as set forth in MM Docket No. 98-13, which is summarized as follows:

<u>City</u>	<u>Channel Number</u>	
	<u>Present</u>	<u>Proposed</u>
Topeka, KS	257A	257C3
Iola, KS	257A	268A
Emporia, KS	258A	241A

The Petition for Rule Making (RM-9216) filed by the city of Pleasanton to add Channel 268C3 at Pleasanton, Kansas has been transformed by the Commission into a Notice of Proposed Rule Making (RM-9216) but is mutually exclusive with **Shawnee's** earlier filed proposed allotment of Channel 268A to Iola, Kansas. No other channel is suitable as a substitute for Channel 268A at Iola, Kansas.

The purpose of this statement is to identify alternate, non-mutually exclusive, channels for use at Pleasanton, Kansas and to demonstrate the public interest benefits associated with a Pleasanton alternate allotment channel.

SELECTION OF ALTERNATE ALLOTMENT CHANNELS - PLEASANTON, KANSAS

A search has been made to determine if an alternate channel(s) is available for Pleasanton, Kansas which

would meet the Commission's city grade service requirements to Pleasanton. The following channels appear to meet all applicable FCC criteria.

Channel 253A at N.L. 38° 10' 00"
W.L. 94° 50' 00"

Channel 229A at N.L. 38° 12' 00"
W.L. 94° 50' 00"

Channel 233A at N.L. 38° 11' 20"
W.L. 94° 47' 27"

Channel 229C3 at N.L. 38° 13' 55"
W.L. 94° 57' 30"

Allocation studies for each channel are shown on Tables I-IV, respectively. It is noted that the U.S. Atlas city reference coordinates for Pleasanton, Kansas are N.L. 38° 10' 30", W.L. 94° 42' 42". All Class A site locations specified herein are within the required 16.2 km Class A city grade reference distance, and the Class C3 allotment coordinates are within the 23.2 km Class C3 city grade reference distance. It is further noted that the city of Pleasanton sits in a valley with a typical elevation AMSL of 260 meters, while all alternate allotment sites (except Channel 233A) are west of the city at higher natural elevations ranging from 280-310 meters and possibly better suited to serving all of Linn County.

PUBLIC INTEREST BENEFIT

There is a public interest benefit associated with implementation of **Shawnee's** Rule Making proposal when compared to the Pleasanton proposal in terms of area and population gains, as shown below:

	60 dBu Contour	
	Population <u>Persons</u>	Area <u>Sq. km</u>
<u>Facility - Shawnee Proposal</u>		
Ch 257A - Topeka, KS (KWIC License)	171,737	2,341
Ch 257C3 - Topeka, KS (Proposed)	<u>195,257</u>	<u>4,684</u>
Gain	23,520	2,343

Ch 257A - Iola, KS (KIKS License)	18,176	1,780
Ch 268A - Iola, KS (Proposed)	<u>29,176</u>	<u>2,517</u>
Gain	11,000	737
Ch 258A - Emporia, KS (KRWV CP)	36,646	2,510
Ch 241A - Emporia, KS (Proposed)	<u>36,702</u>	<u>2,578</u>
Gain	56	68
Ch 258A - Girard, KS (3 kW)	38,061	1,876
Ch 258A - Girard, KS (6 kW)	<u>40,587</u>	<u>2,561</u>
Gain	2,526	685
Total Gain	37,102 Persons	3,833 Square kM

Facility - Pleasanton, Kansas

Ch 268C3	34,241 Persons	4,757 Square kM
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Therefore, the **Shawnee** proposal would provide additional 60 dBu service to 2,861 more persons than the Pleasanton proposal. However, since alternate channels are available, the Commission need not make this decision. The public is better serviced by implementing the **Shawnee** counterproposal and an alternative, non-mutually exclusive channel for Pleasanton so that the radio needs of all four affected communities in the two proceedings are met.

To demonstrate this, the area and population data for alternate Channel 229C3 at Pleasanton have been computed as follows:

Channel 229C3 60 dBu Contour

Area:	4,786 square kM
Population:	30,670 persons

The proposed 70 dBu and 60 dBu contours for Channel 229C3 at Pleasanton are shown on Figure 1, attached while these same contours are shown on Figure 2 for Channel 229A.

The area and population for Channel 229A has also been computed as a worst case (class A) alternative.

The proposed data for this channel are:

Channel 229A 60 dBu Contour

Area: 2,494 Square kM
Population: 12,098 persons

It is noted that the 1990 U. S. Census population for Pleasanton, Kansas is 1,231 persons and the population for Linn County is 8,254 persons. Virtually all of Linn County is served by the alternate, Channel 229A, 60 dBu primary contour.

The final best case alternative becomes:

	<u>Population</u>	<u>Area</u>
Shawnee Proposal	37,102 persons	3,833 square kM
Pleasanton C3 (Ch 229)	<u>34,241</u> persons	<u>4,757</u> square kM
Total Gain	71,343 persons	8,590 square kM

or the worst case alternative becomes:

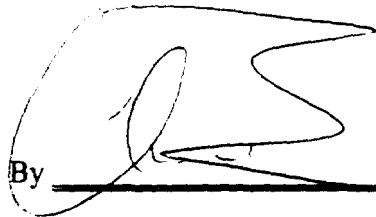
	<u>Population</u>	<u>Area</u>
Shawnee Proposal	37,102 persons	3,833 square kM
Pleasanton A (Ch 229)	<u>12,098</u> persons	<u>2,481</u> square kM
Total Gain	49,200 persons	6,314 square kM

Either proposal is significantly superior to the Pleasanton, Kansas proposal for Channel 268C3, which would serve 34,241 persons in an area of 4,757 square kilometers but would not allow any area and population gains for any of the three communities included in the MM Docket No. 98-13 proceeding.

CONCLUSION

Shawnee offers an alternate set of channels that may be allotted to Pleasanton, Kansas in place of Channel 268C3 proposed by the petitioner. The C3 alternate proposal would allow the greatest total gain in area and population and would also provide four existing FM stations the ability to increase their area and population served while allowing a new service to Pleasanton, Linn County, Kansas.


The foregoing was prepared on behalf of **Shawnee Broadcasting Corp.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By  _____

Clarence M. Beverage
for Communications Technologies, Inc.
Marlton, New Jersey

SUBSCRIBED AND SWORN TO before me,

this 2 nd day of April, 1998,

 NOTARY PUBLIC

ESTHER G. SPERBECK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT. 15, 2002

TABLE I
ALLOCATION STUDY CHANNEL 253A PLEASANTON, KANSAS
APRIL 1998

Search of Channel 253A6 (98.5 MHz), at N. 38 10 0, W. 94 50 0.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Kansas City	KS	251	C	U	105.1	95.0	16.8°	10.1
KUDL	Kansas City	KS	251	C	L	105.1	95.0	16.8°	10.1
KUDL	Kansas City	KS	251	C	L	95.1	95.0	7.6°	0.1
KUDL	Kansas City	KS	251	C	L	105.1	95.0	16.8°	10.1
ALC	Abilene	KS	253	C1	U	219.4	200.0	288.6°	19.4
KSAJFM	Abilene	KS	253	C1	L	219.4	200.0	288.6°	19.4
ALC	Warsaw	MO	253	A	U	130.0	115.0	81.4°	15.0
NEW	Warsaw	MO	253	A	C	130.0	115.0	81.4°	15.0
ALC	Tulsa	OK	253	C	U	246.4	226.0	207.1°	20.4
KVOOFM	Tulsa	OK	253	C	L	246.4	226.0	207.1°	20.4
ALC	Leavenworth	KS	255	C	U	102.7	95.0	12.3°	7.7
KQRCFM	Leavenworth	KS	255	C	L	102.7	95.0	12.3°	7.7

TABLE II
ALLOCATION STUDY CHANNEL 229A PLEASANTON, KANSAS
APRIL 1998

Search of Channel 229A6 (93.7 MHz), at N. 38 12 0, W. 94 50 0.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
=====									
ALC	Kansas City	MO	227	C	U	94.9	95.0	17.4°	-0.0
KMXV	Kansas City	MO	227	C	L	94.9	95.0	17.4°	-0.0
ALC	Parsons	KS	228	A	U	101.4	72.0	200.3°	29.4
KLKCFM	Parsons	KS	228	A	L	101.4	72.0	200.3°	29.4
ALC	Horton	KS	229	C3	U	163.6	142.0	345.5°	21.6
KAIRFM	Horton	KS	229	C3	L	164.0	142.0	345.3°	22.0
ALC	Webb City	MO	230	C2	U	110.1	106.0	164.8°	4.1
KJMK	Webb City	MO	230	C2	L	110.1	106.0	164.8°	4.1
ALC	Kansas City	KS	231	C	U	94.9	95.0	17.4°	-0.0
KFKFFM	Kansas City	KS	231	C	L	94.9	95.0	17.4°	-0.0

TABLE III
ALLOCATION STUDY CHANNEL 233A PLEASANTON, KANSAS
APRIL 1998

Search of Channel 233A6 (94.5 MHz), at N. 38 11 20, W. 94 47 27.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
=====									
ALC	Kansas City	KS	231	C	U	95.1	95.0	15.1°	0.0
KFKFFM	Kansas City	KS	231	C	L	95.1	95.0	15.1°	0.0
ALC	Humboldt	KS	232	C3	V	89.2	89.0	229.2°	0.2
NEW	Humboldt	KS	232	C3	A	91.9	89.0	219.4°	2.9
NEW	Humboldt	KS	232	C3	A	90.2	89.0	231.6°	1.2
ALC	Junction City	KS	233	C1	U	203.1	200.0	296.8°	3.1
KJCKFM	Junction City	KS	233	C1	L	203.1	200.0	296.8°	3.1
ALC	Springfield	MO	234	C	U	173.5	165.0	128.1°	8.5
KTTSFM	Springfield	MO	234	C	L	190.9	165.0	126.1°	25.9
ALC	Kansas City	MO	235	C	U	99.5	95.0	10.5°	4.5
KCMOFM	Kansas City	MO	235	C	L	99.5	95.0	10.5°	4.5

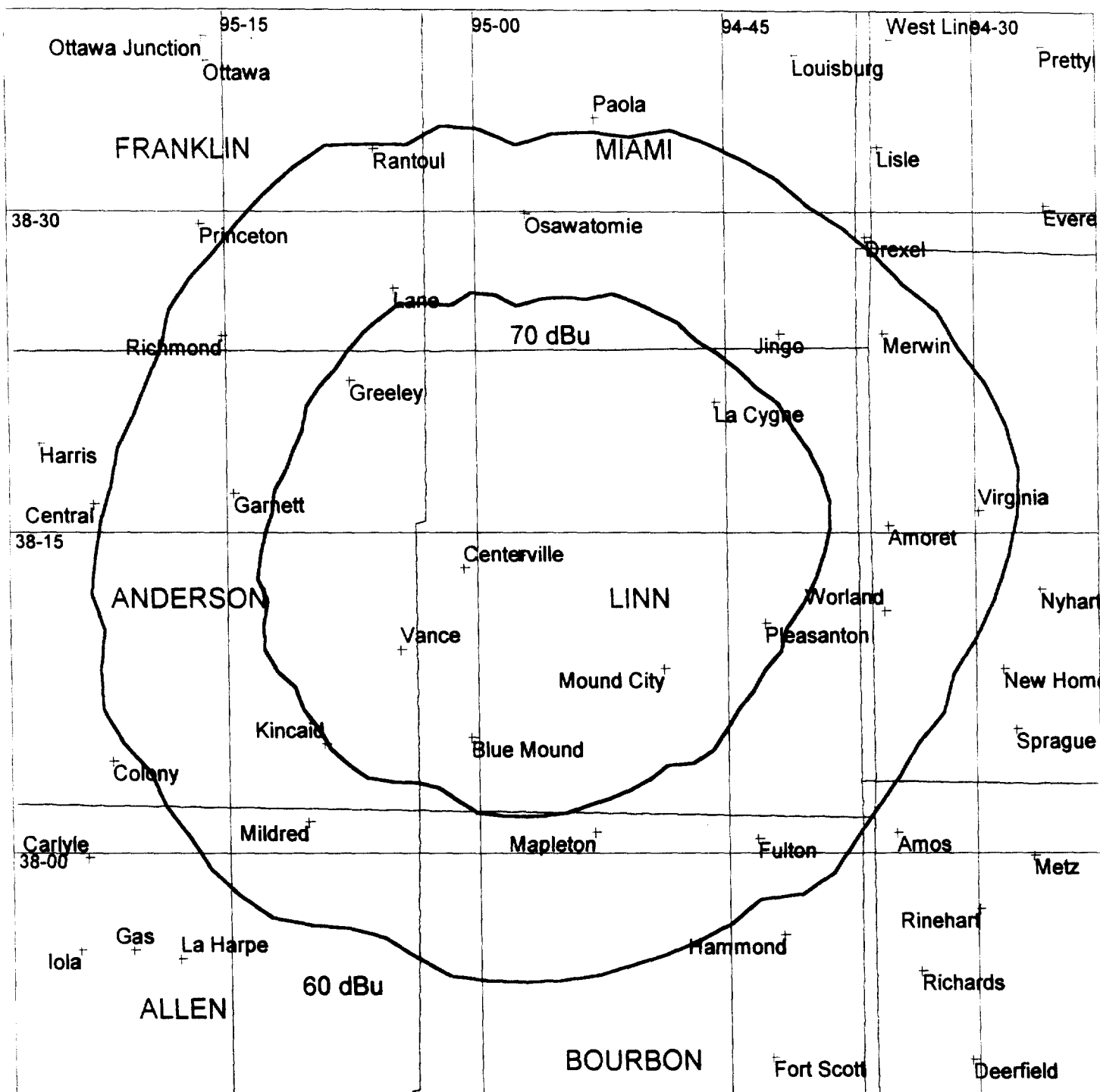
TABLE IV
ALLOCATION STUDY CHANNEL 229C3 PLEASANTON, KANSAS

APRIL 1998

Search of channel 229C3 (93.7 MHz), at N. 38 13 55, W. 94 57 30.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
=====									
ALC	Kansas City	MO	227	C	U	95.5	96.0	24.3°	-0.5
KMXV	Kansas City	MO	227	C	L	95.5	96.0	24.3°	-0.5
ALC	Eureka	KS	228	A	U	125.4	89.0	248.8°	36.4
ALC	Parsons	KS	228	A	U	101.6	89.0	193.7°	12.6
K228CF	Emporia	KS	228	D	L	37.4	0.0	311.9°	37.4
KLKCFM	Parsons	KS	228	A	L	101.6	89.0	193.7°	12.6
KOTE	Eureka	KS	228	A	L	126.8	89.0	247.3°	37.8
ALC	Horton	KS	229	C3	U	157.8	153.0	349.0°	4.8
ALC	Salina	KS	229	C1	U	244.4	211.0	289.1°	33.4
KAIRFM	Horton	KS	229	C3	L	158.1	153.0	348.7°	5.1
KYEZ	Salina	KS	229	C1	L	238.9	211.0	286.4°	27.9
KYEZ	Salina	KS	229	C1	L	244.4	211.0	289.1°	33.4
ALC	Webb City	MO	230	C2	U	116.8	117.0	160.0°	-0.2
KJMK	Webb City	MO	230	C2	L	116.8	117.0	160.0°	-0.2
ALC	Kansas City	KS	231	C	U	95.5	96.0	24.3°	-0.5
KFKFFM	Kansas City	KS	231	C	L	95.5	96.0	24.3°	-0.5
ALC	Humboldt	KS	232	C3	V	82.2	43.0	219.9°	39.2
NEW	Humboldt	KS	232	C3	A	82.7	43.0	222.6°	39.7

FIGURE 1 - CHANNEL 229C3 PLEASANTON, KANSAS



Communications Technologies, Inc. Marlton, New Jersey APRIL 1998

Scale 1:500000

25 Km

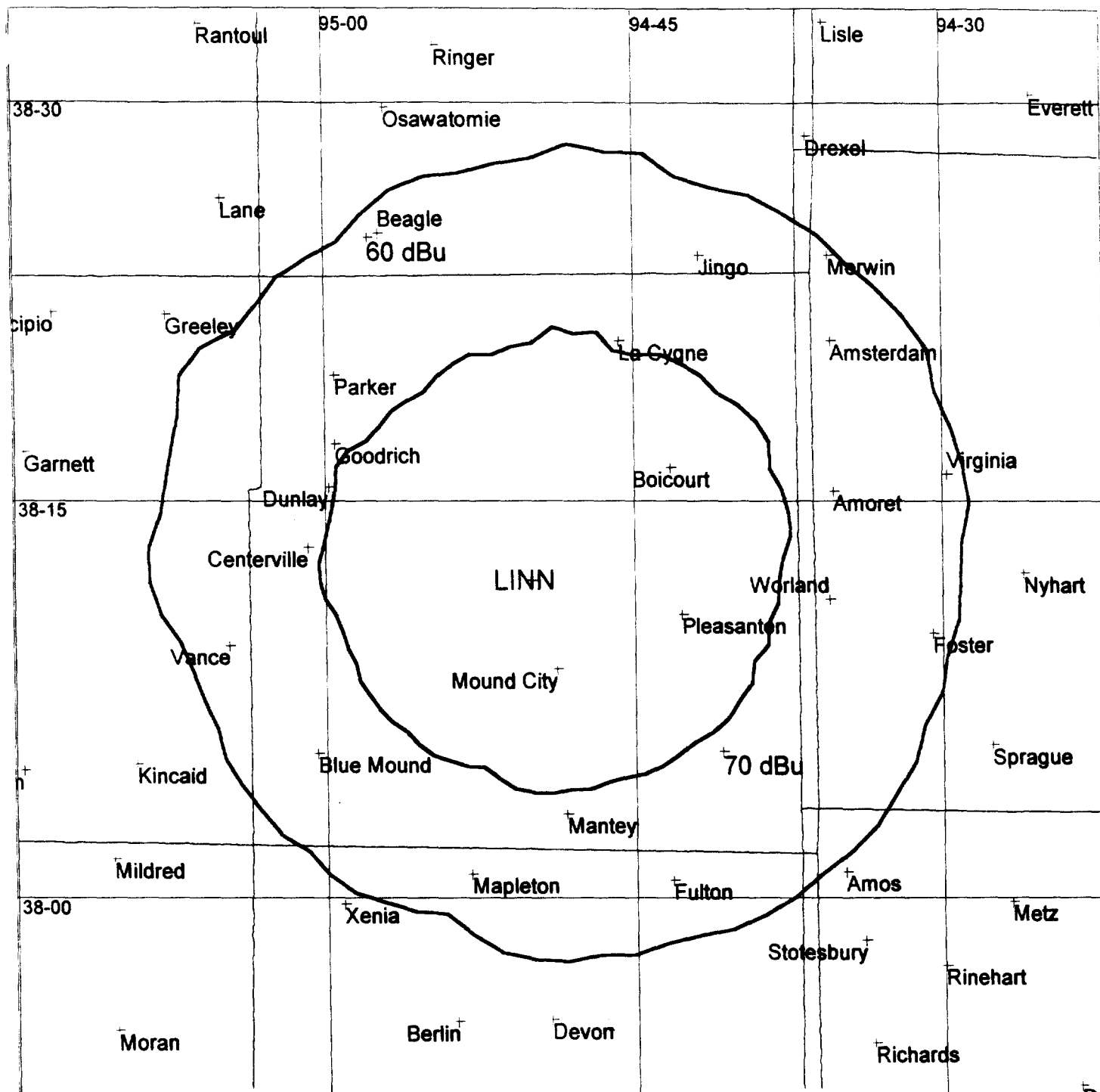
— FM Service

— FM City Grade

— County Borders

- - - Lat-Lon Grids

FIGURE 2 - CHANNEL 229A PLEASANTON, KANSAS



Communications Technologies, Inc. Marlton, New Jersey APRIL 1998

Scale 1:410000

10 Km

— FM Service

— FM City Grade

— County Borders

- - - Lat-Lon Grids

CERTIFICATE OF SERVICE

I, Gillian B. Kirkpatrick, secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 14th day of April, 1998, I have caused to be sent by first class United States mail, postage prepaid, or hand-delivered, a copy of the foregoing "**Reply Comments of Shawnee Broadcasting Corporation**" to the following:

John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W. Suite 565
Washington, D.C. 20554

Andrew J. Rhodes, Esq.*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 536
Washington, D.C. 20554

Ms. Pam Blumenthal*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, D.C. 20554

Dan J. Alpert, Esq.
Law Office of Dan J. Alpert
2120 North 21st Road
Suite 400
Arlington, VA 22201
Counsel for C&C Consulting, Inc. (KRWV)

C & C Consulting, Inc. (KRWV)
713 East Clark
Emporia, KS 41541

Eugene T. Smith, Esq.
715 G Street, S.E.
Washington, D.C. 20003
Counsel for Iola Broadcasting, Inc. (KIKS)

Lauren A. Colby, Esq.
10 East Fourth Street
P.O. Box 113
Frederick, MD 21705-0113
Counsel for Innovative Broadcasting Corp. (KSEK)

John S. Sutherland, Esq.
522 Main Street
P.O. Box 117
Mound City, KS 66056
Counsel for City of Pleasanton, Kansas

Gillian B. Kirkpatrick

Gillian B. Kirkpatrick

***BY HAND**